

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
TOWN OF FINCASTLE
VPDES PERMIT VA0060364**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and 8(d), between the State Water Control Board and Town of Fincastle, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality.
4. "O&M" means operations and maintenance.
5. "Order" means this document, also known as a Consent Special Order.
6. "Permit" means the document issued by DEQ granting permission to discharge wastewater to the waters of the State under permit number VA0060364, which became effective December 13, 2005 and expires December 12, 2010. Permit limits are for a Municipal Discharge.

7. "Town" means Town of Fincastle the Permittee.
8. "Va. Code" means the Code of Virginia (1950), as amended.
9. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. The Town did not submit quarterly Water Quality Standards (WQS) monitoring as required by Part I.C.13 of the Permit. Sampling for total nitrogen and total phosphorus, on a quarterly basis, was required from a discharge from outfall 001. The monitoring was due to DEQ no later than August 10, 2005. The samples have been taken and reported to DEQ and the Town is now on schedule.
2. The Town was required to submit a complete permit application by June 15, 2005. It was submitted on August 8, 2005, and considered complete on August 9, 2005.
3. The Town did not submit once every five years WQS monitoring as required by Permit. The monitoring was due to DEQ on June 15, 2005. The contracted environmental services group that the Town uses was apparently not provided with a copy of the Permit. As a result the additional samples, required by the Permit, were not collected by the deadlines. All samples have now been collected and reported to DEQ.
4. The Town exceeded the maximum loading and concentration limits for Biochemical Oxygen Demand (BOD) in April 2005. The Town states it was attributed to "spring turn-over" of the treatment lagoon.
5. The Town submitted a DMR for February of 2006 that was incomplete. They failed to provide average loading limits for Total Phosphorus, Total Nitrogen, and Phosphorus in Total Orthophosphate. A revised DMR was received by DEQ that corrects the deficiency on April 14, 2006.
6. Two overflows occurred at the intersection of Botetourt Road (Route 220) and West Main Street on November 10, 2005 and on November 27, 2005, with both reaching State waters. Both were caused by a clogged line which resulted in overflows of approximately 2,000 and 3, 000 gallons on the respective dates. The line was cleared and the area around the manhole limed in each case. The Town has conducted additional cleaning of the area mains and service lines to clear any large debris to help mitigate further problems at this manhole.
7. On March 2, 2006 the Town had an overflow from the manhole in front of the Earth Movers facility which is adjacent to the wastewater plant just north of the Town on State Route 220. The overflow was estimated to be approximately 6,000 gallons and drained into a creek bed that leads to Catawba Creek. The cause of the overflow was the result of construction on the new wastewater facility influent line which had been plugged in order to redirect the pipe to a new location. The construction took longer than expected

however and with no contingency plans in place to capture the sewage an overflow resulted.

8. The Town did not submit an approvable O&M manual. The Permit requires submission of the manual, or a statement confirming the accuracy and completeness of the current manual within 90 days of the effective date of the Permit. The manual or verification statement was required no later than March 18, 2006. During a meeting between DEQ and the Town on May 24, 2006, the Town advised DEQ that the manual was in need of a revision and submitted a revised one on June 16, 2006.
9. Notices of Violation were issued to the Town by DEQ on October 20, 2005, April 11, 2006, and May 10, 2006 addressing the violations in C.1 through C.8 above.
10. The Town is in violation of Virginia Code § 62.1-44.5, its Permit, and the following regulations: 9 VAC 25-31-50.A for failure to submit quarterly Water Quality Standards monitoring results for total nitrogen and total phosphorus; 9 VAC 25-31-100 for failure to submit a complete permit application by the required date; 9 VAC 25-31-50.A for failure to submit once every five years Water Quality Standards monitoring results of outfall 001, failure to comply with effluent limits for BOD during April of 2005, and unauthorized discharges of raw sewage to State waters on November 10th and November 27, 2005 and on March 2, 2006; 9 VAC 25-31-50.A for submitting an incomplete DMR and failure to provide the average loading limits for Total Phosphorus, Total Nitrogen, and Phosphorus in Total Orthophosphate for February 2006; and 9 VAC 25-31-250.A for not submitting a confirming statement for existing O&M manual nor a new O&M manual by due date.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders the Town, and the Town voluntarily agrees, to pay a civil charge of \$1,470 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment check must include the Federal Identification Number and a notation that it is for payment of a civil charge pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Town, for good cause shown by the Town, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to the Town by DEQ on October 20, 2005, April 11, 2006, and May 10, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Town admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Town consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Town declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by the Town to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Town shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Town shall

show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Town. Notwithstanding the foregoing, the Town agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Town. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, the Town voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2006.

Steven A. Dietrich, Regional Director
West Central Regional Office
Department of Environmental Quality

The Town voluntarily agrees to the issuance of this Order.

By: S. H. Critzer
Date: 8/3/06

Commonwealth of Virginia

City/County of Bolton

The foregoing document was signed and acknowledged before me this 3 day of
August, 2006, by Scott Critzer, who is
(name)

Mayor of the Town.
(title)

Joan W. Boothe
Notary Public

My commission expires: June 30, 2010.